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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,362	06/02/2006	Peter Huntemann	291262US0PCT	3631
22850	7590	03/11/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			EXAMINER	
1940 DUKE STREET			WOOD, ELLEN S	
ALEXANDRIA, VA 22314			ART UNIT	PAPER NUMBER
			1794	
NOTIFICATION DATE	DELIVERY MODE			
03/11/2009	ELECTRONIC			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/581,362	Applicant(s) HUNTEMANN ET AL.
		Examiner ELLEN S. WOOD	Art Unit 1794
<p>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED 27 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____. Claim(s) objected to: _____. Claim(s) rejected: _____. Claim(s) withdrawn from consideration: _____. </p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u></p> <p>12. <input type="checkbox"/> Note the attached <i>Information Disclosure Statement(s)</i>. (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____. </p> <p>/David R. Sample/ Supervisory Patent Examiner, Art Unit 1794</p>			

Continuation of 11, does NOT place the application in condition for allowance because: The applicant argues that Bartz et al. does not disclose or suggest a syntactic polyurethane. Bartz discloses a polyurethane that is formed from a polyisocyanate component with a polyol component (col. 2 lines 37-46). The polyurethane has a similar component (b1) which is a polyether polyalcohol having a mean functionality of from 1.5 to 2.99 and a mean molecular weight of from 400 to 8000 g/mol. The second component (b2) is a polyether polyalcohol having a mean functionality of from 3 to 5 and a mean molecular weight from 150 to 8000 g/mol, which also is similar to that of the applicant. Inorganic fillers may be added to the invention such as customary organic and inorganic filler such as glass microspheres. The second reference was used to show that it is known in the art that hollow glass microspheres are used to make syntactic polyurethane. It would be obvious to use hollow glass microspheres in the composition of Bartz, because the hollow glass microspheres would produce a syntactic polyurethane that is a light weight foam. This would be advantageous, because Bartz discloses that it is the object of the invention to produce a composite elements that have reduced weight, manufacturing process, resistance to hydrolysis and maintenance intensity (col. 1 lines 45-56). The applicant provides that the high load of microfillers, a low overall density, good extensibility and a softening point about 150C are all reasons why Bartz polyurethane would not be suited for offshore insulation. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, Bartz discloses that the structural components have advantages in respect to their weight, manufacturing process and maintenance intensity. In particular, the composite elements have large dimensions should be simple and quick to produce and also be able to used in shipbuilding due to an improved resistance to hydrolysis (col. 1 lines 48-56). The applicant argues that the material of Bartz will tend to hydrolysis. However, Bartz discloses that the polyurethane foam is advantageous because of the resistance to hydrolysis (col. 1 lines 45-56). Also, it is the product that is formed which deems the claims patentable not the process. The applicant argues that the materials of Bartz are used for construction elements and not for insulation. In order to rely on a reference as a basis for rejection of the claimed invention, the reference must either be in the field of Appellants' endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commanded itself to an inventor's attention in considering his problem. Where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved. Any need or problem known in the field of endeavor at the time of the invention and addressed by the patent or application at issue can provide a reason for combining the elements in the manner claimed. *KSR International Co. v. Teleflex Inc.*, USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of Appellants' endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commanded itself to an inventor's attention in considering his or her invention as a whole. In determining whether prior art is non-analogous art, while a reference may be directed to an entirely different field of endeavor than that of the claimed invention, the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims. *State Contracting & Eng'g Corp. v. Condote America, Inc.*, 346 F.3d 1057, 1068, 68 USPQ2d 1481, 1488 (Fed. Cir. 2003). A reference which is outside the field of the claimed invention is analogous art if it recites, explicitly or inherently, every limitation or structure of the recited claims. It is not necessary for the invention in the reference to intend to accomplish the purpose of the claimed invention. The invention in the reference must simply be capable of accomplishing the purpose of the claimed invention. Intuitively, the similar purposes can be accomplished by identical inventions containing identical structures.